

In the Matter of License No. 208349 Merchant Mariner's Document  
Z-294956

Issued to: William L. King

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1376

William L. King

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 1 August 1962, an Examiner of the United States Coast Guard at Corpus Christi, Texas suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Assistant Engineer on board the United States SS START POINT, under authority of the license above described, on or about 10 July 1962, Appellant assaulted and battered the Chief Steward with his fists.

Appellant was represented by counsel at the hearing and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Panagopoulos (the Chief Steward), Bencis and O'Keefe.

In defense, Appellant offered in evidence his own testimony and that of Morgan and Gregory.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of four months outright plus 6 months on 18 months probation.

FINDINGS OF FACT

On 10 July 1962 Appellant was serving as Second Assistant Engineer on board the SS START POINT and acting under the authority of his duly issued license while the ship was in the port of Corpus Christi, Texas.

About 0200 on that morning Appellant, in an intoxicated condition, opened the door to the Chief Steward's room, and started to enter saying that he would get the steward. Maintenceman

Bencis, who at this time was in the room, immediately closed and locked the door forcing Appellant back into the passageway and thereby avoiding any possible difficulty. Shortly thereafter Appellant appeared before the Chief Steward's door and either unlocked the door and opened it or forced it open. Appellant then rushed into the room and struck the Chief Steward in the eye with his fist. Bencis succeeded in pushing Appellant out of the room. At the hearing held the following day Chief Steward Panagopoulos exhibited a black eye. Appellant has no prior record.

#### BASES OF APPEAL

Appellant lists as ground for appeal the following contentions:

1. The government did not establish beyond a reasonable doubt that Appellant was guilty as charged.
2. Even if Appellant was guilty there were circumstances which justified or mitigated his act.
3. The punishment was unduly severe for the act alleged.

APPEARANCE: Kleberg, Mobley, Lockett and Weil of Corpus Christi, Texas, by John C. Brooke, Esquire, of Counsel.

#### OPINION

Appellant's first contention can be dismissed without extended discussion. The proceeding against a merchant mariner's document or license is not criminal in nature and therefore the government need not carry its burden of proof "beyond a reasonable doubt." The test to be applied is whether or not there is substantial, reliable, and probative evidence to support a suspension of the license or document. See 46 CFR §137.20-95 and Commandant's Appeal Decision No. 1081.

The issue in this case is whether or not Appellant committed a battery upon Panagopoulos. The evidence is uncontradicted to the extent that Appellant went into the Chief Steward's cabin without the latter's consent or invitation. Whatever Appellant's motives may have been for such action, he certainly was not justified in breaking into the room. If there were any personal differences between two crew members the proper conduct for Appellant was to lodge a complaint against Panagopoulos with the Master and not take matters into his own hands.

Bencis, the only material and also disinterested witness in

this case, testified that Appellant at first opened the door and yelled "I came to get you, Steward." (R. 25) The circumstances leading up to this verbal expression plainly indicate that a threat was intended. Bencis succeeded in preventing any difficulty at this time. However, Appellant returned several minutes later and literally broke into the Chief Steward's room. Panagopoulos testified that Appellant struck him in the eye at this time. (R. 16)

Although Appellant denies this, Panagopoulos' statement is corroborated by Bencis, who stated that Appellant "lunged" at the Steward (R. 32), and by the fact that Panagopoulos' eye was black the following day. Since the Examiner accepted Bencis' and Panagopoulos' testimony, this constitutes substantial evidence to show that an assault and battery upon Chief Steward was committed by the Appellant. There is no reason to reject this determination as to credibility.

Appellant's other contentions that there were several mitigating circumstances and that the order of the Examiner is excessive are deemed to be without merit in view of Appellant's position as a licensed officer on the ship.

#### ORDER

The order of the Examiner dated at Corpus Christi, Texas, on 1 August 1962 is AFFIRMED.

D. McG. MORRISON  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 11th day of March 1963.